

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MILGARD MANUFACTURING, INC.,

Plaintiff,

v.

LIBERTY MUTUAL INSURANCE
COMPANY,

Defendant.

CASE NO. 13-cv-6024 BHS

ORDER DENYING MILGARD
MANUFACTURING, INC.'S
MOTION TO COMPEL
PRODUCTION OF DOCUMENT

On June 29, 2015, District Judge Benjamin H. Settle referred certain discovery issues to the undersigned (*see* Dkt. 270). On July 29, 2015, this Court issued a Minute Entry asking both parties to submit briefing regarding defendant Liberty Mutual Insurance Company's ("Liberty's") invocation of the attorney client privilege with respect to a coverage letter contained in its claim file (Dkt. 286). Both sides submitted briefing (Dkts. 288, 290, 291, 292) and defendant Liberty submitted the letter in question for the Court's *in camera* review (Dkt. 289).

The parties have agreed to be bound by this Order subject to normal appeal procedures.

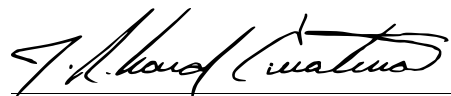
1 The Court has reviewed the briefing and the letter and has determined that under *Cedell*
2 *v. Farmers Ins. Co. of Washington*, 295 P.3d 239 (Wash. 2013), the subject letter appears to be
3 for the sole purpose of providing a coverage opinion to Liberty and was not done with any quasi-
4 fiduciary purpose such as investigating the claim. Therefore, the letter is protected by the
5 attorney-client privilege.

6 Pursuant to *Cedell, supra*, an insurer may assert an attorney client privilege upon a
7 showing *in camera* that the attorney was providing counsel to the insurer and not engaged in a
8 quasi-fiduciary function. Upon such a showing, the insured may only pierce the attorney-client
9 privilege in limited circumstances, none of which apply in this case.

10 After reviewing the record, and the letter *in camera*, it is clear that the purpose of the
11 letter was to provide coverage analysis and not for any other investigative purpose. Therefore, it
12 falls within the exception to the general rule that the contents of a claim file should be produced
13 in a bad faith claim.

14 Therefore, Milgard's motion to compel the production of that letter is DENIED.

15 Dated this 12th day of August, 2015.

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17 J. Richard Creatura
18 United States Magistrate Judge
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